

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:05-cv-00329-GKF-PJC
)	
TYSON FOODS, INC., <i>et al.</i>)	
)	
Defendants.)	

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTIONS IN
LIMINE PERTAINING TO ALTERNATE SOURCES OF PHOSPHORUS AND
BACTERIA TO THE IRW [Dkt. No. 2436] AND BACTERIAL OR PHOSPHORUS
LEVELS IN OTHER WATERSHEDS [Dkt. No. 2411]**

EXHIBIT 7
Dennis Cooke Deposition Excerpts

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)
Plaintiff,)
vs.) 4:05-CV-00329-TCK-SAJ
TYSON FOODS, INC., et al,)
Defendants.)

- - - - -

VOLUME I OF THE VIDEOTAPED
DEPOSITION OF DENNIS COOKE, PhD, produced as a
witness on behalf of the Defendants in the above
styled and numbered cause, taken on the 4th day of
December, 2008, in the City of Tulsa, County of
Tulsa, State of Oklahoma, before me, Lisa A.
Steinmeyer, a Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the
State of Oklahoma.

A P P E A R A N C E S

FOR THE PLAINTIFFS: Mr. David Page
Attorney at Law
502 West 6th Street
Tulsa, OK 74119

FOR TYSON FOODS: Mr. Bryan Burns
Attorney at Law
2210 West Oaklawn Drive
Springdale, AR 72762

FOR CARGILL: Ms. Theresa Hill
Attorney at Law
100 West 5th Street
Suite 400
Tulsa, OK 74103
-and-
Ms. Melissa Collins
Attorney at Law
1700 Lincoln Street
Suite 3200
Denver, CO 80203

FOR SIMMONS FOODS: Mr. John Elrod
Attorney at Law
211 East Dickson Street
Fayetteville, AR 72701

FOR PETERSON FARMS: Mr. Scott McDaniel
Attorney at Law
320 South Boston
Suite 700
Tulsa, OK 74103

FOR GEORGE'S: Mr. Woodson Bassett
Mr. James Graves
Attorneys at Law
221 North College
Fayetteville, AR 72701

FOR CAL-MAINE:

Mr. Robert Sanders
Attorney at Law
2000 AmSouth Plaza
P. O. Box 23059
Jackson, MS 39225
(Via phone)

FOR WILLOW BROOK:

Ms. Jennifer Griffin
Attorney at Law
314 East High Street
Jefferson City, MO 65109
(Via phone)

I N D E X

W I T N E S S

P A G E

DENNIS COOKE, PhD

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1 (Whereupon, the deposition began at
2 8:34 a.m.)

3 VIDEOGRAPHER: We are now on the Record for
4 the deposition of Dennis Cooke. Today is December
5 4th, 2008. The time is 8:33 a.m. Would counsel 08:34AM
6 please identify themselves for the Record?

7 MR. PAGE: David Page for the State of
8 Oklahoma.

9 MR. BASSETT: Woody Bassett and James
10 Graves for the George's defendants. 08:34AM

11 MS. HILL: Theresa Hill for the Cargill
12 defendants.

13 VIDEOGRAPHER: And on the phone?

14 MS. GRIFFIN: Jennifer Griffin for Willow
15 Brook Foods. 08:34AM

16 MR. SANDERS: Bob Sanders for the Cal-Maine
17 defendants.

18 MS. COLLINS: Melissa Collins for the
19 Cargill defendants.

20 VIDEOGRAPHER: Thank you. The witness may 08:34AM
21 be sworn in.

22 DENNIS COOKE
23 having first been duly sworn to testify the truth,
24 the whole truth and nothing but the truth, testified
25 as follows:

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1 reservoir.

2 Q Have you ever been to Broken Bow?

3 A No.

4 Q Never been to Broken Bow Reservoir?

5 A No.

09:15AM

6 Q Never been in the Mountain Fork River
7 watershed?

8 A No.

9 Q Dr. Welch I believe told me he hadn't been
10 there either. Is that your understanding?

09:15AM

11 A That's my understanding.

12 Q Did you not think it was necessary to go down
13 there since you were using it as a reference lake?

14 A No, we didn't need to go there.

15 Q Why not?

09:15AM

16 A We were looking for a reference reservoir that
17 would allow us to see what the impact of poultry
18 waste was on Tenkiller, and we had some criteria
19 that we had to fulfill, and Broken Bow fulfilled
20 enough of it. It's found in adjacent ecoregion to

09:16AM

21 Tenkiller. These are ecoregions where you would
22 expect and you do find reservoirs that are
23 oligotrophic, that is, very low productive
24 reservoirs. By their nature, that's the
25 characteristic of this ecoregion. Broken Bow also

09:16AM

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1 had data on it and data that were obtained down the
2 length of the reservoir.

3 Q Data from whom?

4 A The data were taken from OWRB, which is the
5 Water Resources Board of Oklahoma, by Army Corps of
6 Engineers and by the fisheries people of the State
7 of Oklahoma, and I'm not sure whether they have a
8 separate department or not.

09:16AM

9 Q We'll come back to Broken Bow.

10 A Sure.

09:17AM

11 Q You told me about the reports and the whatever
12 depositions you may have looked at in connection
13 with your preparation here today. What else have
14 you looked at to prepare for your deposition today?

15 A In addition, I've done a lot of reading of
16 primary literature, including some of the literature
17 that I cited in the report and materials that I'd
18 either discovered or have published since the report
19 was written. So that would be the extent of my
20 preparation.

09:17AM

09:17AM

21 Q How many textbooks have you written on
22 limnology?

23 A As a the first author, three. I also -- four.
24 I have four first authored, and another where I'm a
25 co-author but not the first author.

09:17AM

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1 Q Where?

2 A In Arkansas. I cannot tell you which firm it
3 was I'm sorry to say.

4 Q What was the slope of the land?

5 A You know, I do a lot of long distance running, 11:03AM
6 and I begin to get a sense of slope.

7 MR. ELROD: Try weighing 210 pounds.

8 A And the answer is that was probably a 6 to 8
9 percent slope.

10 Q So you've seen one application? 11:04AM

11 A Yes.

12 Q Are you going to be offering any opinions at
13 the trial of this case regarding the trophic state
14 of Lake Tenkiller versus the trophic state of Broken
15 Bow Reservoir? 11:04AM

16 A Yes.

17 Q What are those opinions?

18 A Well, there's a dramatic difference between
19 them. Broken Bow is oligotrophic to borderline
20 mesotrophic; whereas, Tenkiller is eutrophic to 11:04AM
21 hypereutrophic.

22 Q Anything else?

23 A No -- well, yes. There's no question there's
24 a measured difference in the fish communities of the
25 two that are directly connected to trophic state. 11:04AM

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1 Q Have you compared the watersheds, Tenkiller
2 watershed or Illinois River watershed, with the
3 Mountain Fork River watershed in terms of size?

4 A Yes, I have.

5 Q Have you looked at the ratios between land and 11:05AM
6 water?

7 A Yes.

8 Q Tell me about that.

9 A The two watersheds -- Tenkiller's -- the
10 Illinois River watershed is about twice the size in 11:05AM
11 area of Broken Bow's watershed. The Illinois River
12 watershed is about 1,600 square kilometers, and the
13 Broken Bow watershed is around 750 square
14 kilometers. So it means that the ratio of land to
15 water is approximately twice in Tenkiller as it is 11:05AM
16 in Broken Bow. The ratio actually in Tenkiller is
17 80 to 1 and in Broken Bow 34 to 1 approximately,
18 could be 35.

19 Q So the ratio is more than twice in -- for
20 Tenkiller than it is in Broken Bow; right? 11:06AM

21 A Yes.

22 Q Why is it fair to compare those two reservoirs
23 then given that?

24 A It's very fair to compare those two
25 reservoirs. 11:06AM